

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CHRISTOPHER DANIEL GAY, #131817,)	
)	
Petitioner,)	
)	
v.)	CASE NO. 2:08-CV-239-WKW
)	
)	[WO]
)	
STATE OF ALABAMA, et al.,)	
)	
Respondents.)	

RECOMMENDATION OF THE MAGISTRATE JUDGE

This case is pending before the court on a 28 U.S.C. § 2254 petition for habeas corpus relief filed by Christopher Daniel Gay [“Gay”], a state inmate, on March 27, 2008.¹ In this petition, Gay challenges actions taken by the Circuit Court of St. Clair County, Alabama with respect to the sentence imposed upon him on March 21, 2007 for a conviction of first degree theft of property. Specifically, Gay argues the trial court refused to order that he receive all requisite jail credit as required by the plea agreement and state law. *Petition for Writ of Habeas Corpus - Court Doc. No. 1* at 3-4. Gay requests that the “St. Clair County courts honor their plea agreement and give me my jail credits....” *Id.* at 16.

¹Although the Clerk of this court stamped the petition “filed” on April 1, 2008, Gay executed the petition on March 27, 2008. *Petition for Writ of Habeas Corpus - Court Doc. No. 1* at 15. The law is well settled that a pro se inmate’s petition is deemed filed on the date it is delivered to prison officials for mailing. *Houston v. Lack*, 487 U.S. 266, 271-272 (1988); *Adams v. United States*, 173 F.3d 1339, 1340-41 (11th Cir. 1999); *Garvey v. Vaughn*, 993 F.2d 776, 780 (11th Cir. 1993). “Absent evidence to the contrary in the form of prison logs or other records, [this court] must assume that [the instant petition] was delivered to prison authorities the day [Gay] signed it....” *Washington v. United States*, 243 F.3d 1299, 1301 (11th Cir. 2001). In light of the foregoing, the court considers March 27, 2008 as the date of filing.

DISCUSSION

This court “in the exercise of its discretion and in furtherance of justice” may transfer an application for writ of habeas corpus to “the district court for the district within which the State court was held which convicted” the petitioner. 28 U.S.C. § 2241(d). Gay attacks actions undertaken by the Circuit Court of St. Clair County, Alabama with respect to the terms of a sentence imposed by such court. St. Clair County is located within the jurisdiction of the United States District Court for the Northern District of Alabama. In light of the foregoing, the court concludes that transfer of this case to such other court for review and disposition is appropriate.

CONCLUSION

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that this case be transferred to the United States District Court for the Northern District of Alabama pursuant to the provisions of 28 U.S.C. § 2241(d).

It is further

ORDERED that on or before April 17, 2008 the parties may file objections to the Recommendation. Any objections filed must specifically identify the findings in the Magistrate Judge's Recommendation to which the party is objecting. Frivolous, conclusive or general objections will not be considered by the District Court. The parties are advised that this Recommendation is not a final order of the court and, therefore, it is not appealable.

Failure to file written objections to the proposed findings and advisements in the

Magistrate Judge's Recommendation shall bar the party from a de novo determination by the District Court of issues covered in the Recommendation and shall bar the party from attacking on appeal factual findings in the Recommendation accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5th Cir. 1982). *See Stein v. Reynolds Securities, Inc.*, 667 F.2d 33 (11th Cir. 1982). *See also Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981, *en banc*), adopting as binding precedent all of the decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

DONE, this 4th day of April, 2008.

/s/ Susan Russ Walker
SUSAN RUSS WALKER
UNITED STATES MAGISTRATE JUDGE